IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 745 of 2005
In
SPECIAL CIVIL APPLICATION No. 3178 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VOHRA USMANBHAI GANIBHAI - Appellant(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORP. - Respondent(s)

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Appearance :
MR HARNISH V DARJI for Appellant(s) : 1,
MR HARDIK C RAWAL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 19/09/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

The appellant workman has challenged, in this appeal, the judgment and order dated 26th April, 2005 passed by the learned Single Judge of this court (D.N.

Patel, J.) in Special Civil Application No.3178 of 2005 whereby the learned Single Judge allowed the writ petition i.e. Special Civil Application No.3178 of 2005 filed by the respondent Corporation and quashed and set aside the impugned judgment and award passed by the Labour Court on 13th September, 2004 in Reference (LCS) No.1021 of 1999 ordering reinstatement of the workman in service without back wages.

2. Though it is stated in the impugned judgment and award passed by the Labour Court that the appellant workman was a permanent employee, the record shows that at the time of his termination, he was working on daily wage basis at the rate of Rs.90.83 paise per day as Conductor for the respondent Corporation. It is stated at the bar by learned counsel Shri Darji for the appellant that somewhere in 1996, he was appointed on daily wages but by an order dated 8th February, 1999, he was appointed on time-scale basis and, therefore, it is stated in the judgment of the Labour Court that he was a permanent employee. However, Mr. Rawal for the respondent Corporation places on record a copy of the order dated 8th February, 1999 passed by the Divisional Controller, S.T., Surat whereby, in all, 16 persons were

appointed on time-scale basis including the appellant workman who is at Sr. No.14 in the order. However, according to the submission of Mr. Rawal, he was not appointed on permanent basis which is clear from Footnote (10) which shows that he was appointed on a probationary basis for a period of 12 months from the date of the order. Mr. Rawal has also placed on record a copy of the termination order dated 16th January, 1999 passed by the competent authority and Divisional Traffic Superintendent, Surat terminating the services of the petitioner on the ground of misconduct of misappropriation found to be proved against him during the departmental inquiry and submitted that though the services of the appellant - workman were terminated on 16th January, 1999, it was not brought to the notice of the Divisional Traffic Superintendent, S.T., Surat when he passed the common order of 16 persons including the appellant - workman appointing him on time-scale basis. Be that as it may. Against his termination order dated 16th January, 1999, the appellant - workman filed Departmental Appeal No.146 of 1999 before the appellate authority which was dismissed on 30th July, 1999. Copy of the said order is also produced on record by learned counsel Shri Rawal for the respondent Corporation. From

the said order of appeal also, it is clear that his initial appointment was on daily wage basis at the rate of Rs.90.83 paise per day. After hearing him personally, his appeal was dismissed by the appellate authority.

2.1 Thus, it is clear that at the time of the incident i.e. On 23rd April, 1997, the appellant - workman was working on daily wage basis at the rate of Rs.90.83 paise per day with the respondent Corporation in his capacity as Conductor. On that day, he was on duty as Conductor in the bus which was going from Mandvi to Netrang. When his bus was checked at village Vadi by the Line Checking Officers, in all, 36 passengers were travelling in the bus out of which six passengers who boarded the bus from village Zankhavav to village Vadi were found without tickets. He was asked to explain about the same. But he had given his half statement and thereafter refused to give full details about the passengers travelling in his bus without tickets. He has also refused to sign the statement of the passengers recorded by the Checking Squad. For these misconducts, he was chargesheeted on 7th July, 1997. Out of six passengers, two passengers were fined for Rs.20/- whereas four passengers have stated in their statement that though they paid the fare, they were

not issued tickets by the Conductor. After giving full opportunity to the appellant - workman in the departmental inquiry and considering his reply, the disciplinary authority came to the conclusion that the charges levelled against the workman were found to be fully proved and when the workman was found guilty for serious misconduct of misappropriation of public money, then, though it was his first misconduct, he cannot be retained in service any more and accordingly, his services were terminated by an order dated 16th January, 1999. As stated earlier, his departmental appeal was also dismissed by the appellate authority on 30th July, 1999. Therefore, the appellant - workman approached the Labour Court by way of LCS (Reference) No.1021 of 1999. The learned Labour Judge found in his impugned judgment that the statement of the workman at Exh.13 was not fully recorded wherein it is not stated as to whether the passengers had given him money for the tickets or not and that Nathubhai Vasava, one of the passengers travelling in the bus without ticket, was fined for Rs.20/- for which a receipt was issued which bears the signature of the driver of the bus. In that view of the matter, it cannot be said that the charge of misappropriation was fully proved against the workman. Accordingly, the

learned Labour Judge came to the conclusion that it was a case of negligence and not of misappropriation. Therefore, considering his past clean record and the fact that it was his first misconduct, he was of the opinion that punishment of maximum penalty of termination from service was highly disproportionate to the misconduct found to be proved against the workman. Therefore, exercising his powers under Section 11(A) of the Industrial Disputes Act, 1947 (for short, 'the Act'), he quashed and set aside the termination order passed by the respondent Corporation and ordered to reinstate the respondent workman in service but without back wages, in view of the purshis at Exh.35 given by the respondent workman before him to the effect that he will willingly let go the back wages. According to the learned Labour Judge, denying back wages would be sufficient punishment. Thus, by the impugned judgment and award dated 13th September, 2004, he ordered reinstatement of the appellant - workman in service without back wages.

3. Aggrieved of the impugned judgment and award of reinstatement passed by the Labour Court, the respondent Corporation approached this court by way of writ petition i.e. Special Civil Application No.3178 of 2005 which was

admitted by the learned Single Judge of this court but the learned Single Judge refused to stay the order of reinstatement passed by the Labour Court. Hence, the Divisional Superintendent, S.T., Surat passed order dated 10/16th February, 2005 reinstating the appellant - workman in service on a monthly salary of Rs.2550/- at his original post of Conductor, subject to the result of the writ petition. Mr. Darji for the appellant - workman has produced copy of the reinstatement order, which is ordered to be taken on record of this case. Mr. Darji has also produced an order dated 1st March, 2005 passed by Divisional Manager, S.T. Surat Division, Surat reinstating him in service with the clause that his reinstatement in service is on condition and subject to the outcome of the writ petition. The same is also ordered to be taken on record. Thereafter, the learned Single Judge of this court finally allowed the main writ petition i.e. Special Civil Application No.3178 of 2005 filed by the respondent Corporation by a detailed judgment dated 26th April, 2005 and quashed and set aside the impugned judgment and award of reinstatement of the workman passed by the Labour Court as according to him, it was not a case of negligence but it was a case of misappropriation and once the misappropriation is found

to be proved, then except penalty of termination, no other order can be passed. While allowing the writ petition, the learned Single Judge has relied on several judgments of the Hon'ble Supreme Court as well as this court. This is challenged in this appeal.

4. Learned counsel Shri Darji for the appellant firstly submitted that when the Labour Court exercised its powers under Section 11(A) of the Act in favour of the respondent workman by simply ordering his reinstatement in service without back wages, then such an order ought not to have been interfered by the learned Single Judge of this court in his writ jurisdiction under Article 226/227 of the Constitution. Mr. Darji vehemently submitted that after appreciating the evidence on record, the Labour Court came to the conclusion that it was a case of negligence in not issuing tickets to the passengers who were travelling in his bus and not a case of misappropriation. This set of finding of fact recorded by the Labour Court ought not to have been interfered by the learned Single Judge of this court in his writ jurisdiction. In support of his contention, Mr. Darji has taken us through the impugned judgment and award passed by the Labour Court wherein the learned

Labour Judge has observed that the statement of the workman at Exh.13 was incomplete wherein it is not stated about the fare of the tickets collected from the passengers and that one passenger Shri Nathubhai Vasava travelling in the bus without ticket was imposed fine of Rs.20/-. However, learned counsel Shri Rawal for the respondent Corporation pointed out that there were, in all, six passengers, out of 36 passengers travelling in the bus, who were found without tickets when the bus was checked at village Vadi which was their last destination. Out of those six passengers, four have clearly stated in their statement that they had already paid the fare of the tickets to the Conductor – appellant - workman but they were not issued tickets. Therefore, no fine was imposed on them whereas two passengers Nathubhai Vasava and another were found travelling in the bus without tickets and without paying fare to the Conductor. Therefore, the fine was imposed on them. However, it is clear that without collecting fares, the Conductor had obliged those two passengers who were travelling in the bus without tickets right from Zankhavav till village Vadi where the bus was checked. He, therefore, submitted that the Labour Court has completely misread the evidence and unnecessarily gave undue importance to the incomplete

statement of the workman at Exh.13 for exercising its jurisdiction under Section 11(A) of the Act in favour of the workman. Therefore, the learned Single Judge of this court rightly interfered with the same in his writ jurisdiction under Articles 226 and 227 of the Constitution.

4.1 Having heard the learned counsel for the parties and having carefully gone through the impugned judgment and award passed by the Labour Court as well as the judgment of the learned Single Judge in writ petition, we are of the considered opinion that the Labour Court has wrongly given undue importance to incomplete statement of the workman at Exh.13 and the fine of Rs.20/- imposed on passenger Nathubhai who was also travelling in the bus without ticket. There was ample evidence in the form of four other passengers who have clearly stated in their statements that they had already paid the fare of their tickets but the Conductor did not issue the tickets to them till the bus was checked at village Vadi. It may be stated that the Conductor refused to sign the statements of those passengers which were recorded at the place of incident. Exh.15, receipt of the fine of Rs.20/- imposed on passenger Nathubhai Vasava, would not make any

difference when it is proved in the departmental inquiry, on the basis of the statements of four other passengers, that the Conductor had not issued tickets to them though he collected the fare from them.

5. Learned counsel Shri Darji then submitted that the learned Single Judge completely overlooked the fact that this was his first misconduct. Therefore, the Labour Court was right in taking lenient view of the matter by simply ordering reinstatement denying back wages for a period of almost five years. That punishment itself was sufficient punishment. He submitted that the disciplinary authority should have at least given one opportunity to the workman to improve and without considering this aspect, the learned Single Judge set aside the impugned judgment and award passed by the Labour Court reinstating the workman in service without back wages. It is true that this was his first misconduct and his past record was clean. However, when the learned Single Judge thought it fit to exercise his discretionary jurisdiction against the workman in view of serious misconduct of misappropriation committed by the workman and set aside the judgment and award of reinstatement without back wages of the workman, then we

are of the considered opinion that such a discretionary order cannot be interfered by this court in Letters Patent Appeal. In our considered opinion, the learned Single Judge was absolutely justified in placing reliance on the Hon'ble Supreme Court judgment in the case of **JANATHA BAZAR (SOUTH KANARA CENTRAL COOPERATIVE WHOLESALE STORES LTD.) AND OTHERS vs. SECRETARY, SAHAKARI NOUKARARA SANGHA AND OTHERS reported in (2000) 7 SCC Page 571** in holding that there was no question of showing uncalled for misplaced sympathy in reinstating such workman in service who is found to be guilty for the serious charge of misappropriation. Such a person cannot be given even one more chance. The misconduct was such which calls for only the maximum penalty of termination from service and no other penalty could be said to be just and proper penalty. The learned Single Judge has rightly observed in his judgment that

> “If the order of reinstatement is allowed to be passed by the Labour Court it will provide further opportunity to the respondent-workman in indulging similar type of misconducts again and reinstatement in the same post would therefore involve great misconduct because of repetition of

the opportunity.”

We fully agree with the learned Single Judge and add that if such a serious view of the matter is not taken, then other workmen also may try to indulge in this type of activity of misappropriation. For a serious offence like murder u/s.302 IPC either life imprisonment or death sentence can be awarded and court has no discretion. Similarly, for misappropriation of public funds one can either be removed or dismissed from service and no other penalty lesser than it can be imposed, even if it was his first misconduct.

6. Learned counsel Shri Rawal relied on the judgment of the Hon'ble Supreme Court in the case of **STATE OF HARYANA AND ANOTHER vs. RATTAN SINGH reported in AIR 1977 Page 1512** wherein the Hon'ble Supreme Court has observed that

> “The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of

> independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded."

We fully agree with the proposition laid down by the Hon'ble Supreme Court in Rattan Singh's case (supra). At the cost of repetition, we may state that the Labour Court has completely misread the evidence on record and wrongly exercised its discretion under Section 11(A) of the Act in favour of the workman. Therefore, there was no option but to interfere with the said judgment and award by the learned Single Judge in his writ jurisdiction and the learned Single Judge, in our considered opinion, in light of the Hon'ble Supreme Court judgment in Janatha Bajar's case (supra) and other judgments of this court, rightly interfered with the same.

7. Before parting, we may state that the learned counsel Shri Darji for the appellant - workman had submitted that after the impugned judgment and award was passed by the Labour Court, during the pendency and final disposal of the main petition filed by the respondent Corporation, the workman was reinstated in service and that too, as a permanent employee and worked up to 12th July, 2005, the day on which his services were once again terminated by the Corporation after the learned Single Judge of this court allowed the writ petition filed by the Corporation on 26th April, 2005. It is true that during the pendency and final disposal of the writ petition, the workman was ordered to be reinstated in service but subject to the outcome of the main writ petition and when the learned Single Judge allowed the writ petition then, in our considered opinion, the Corporation was right in once again terminating his service. Merely because some mistake was committed by the Corporation while reinstating him in service as a permanent employee would not confer any right on him to plead equity.

8. In view of the above discussion, we do not see any substance on merits in this appeal and accordingly, it is

dismissed. However, there shall be no order as to costs.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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